

MELISSA NYLAND,	}	
Plaintiff,		2:15-cv-01670 JWS
vs.		ORDER AND OPINION
ROOKE, LLC, d/b/a RIOT HOSPITALITY GROUP,		[Re: Motions at Dockets 19 & 26]
Defendant.		

At docket 19 Plaintiff Melissa Nyland (“Plaintiff”) filed a motion to amend. Defendant Rooke, LLC, d/b/a Riot Hospitality Group (“Rooke” or “Defendant”) responded at docket 21. Plaintiff’s reply is at docket 22. Defendant subsequently filed a “Notice of Errata in Supplement to its Response in Opposition to Plaintiff’s Motion to Amend” at docket 23. Plaintiff filed a motion to strike the notice at docket 26, and Defendant responded at docket 27. Oral argument was not requested in relation to either motion, and argument would not be of assistance to the court.

Plaintiff alleges she worked as a cocktail server at a restaurant, El Hefe Super Macho Taqueria (“El Hefe”), in Scottsdale, Arizona, and that Rooke was her employer

1 because it “owns and operates” El Hefe.¹ Plaintiff brings two Title VII sexual
2 harassment claims against Rooke. Specifically, Plaintiff alleges she engaged in a
3 sexual relationship with El Hefe’s General Manager, Parker Haleen (“Haleen”), and that
4 Haleen used the relationship to manipulate the terms and conditions of her employment
5 and “demonstrated that her continued employment was conditioned upon the prosperity
6 and existence of their sexual relationship.”² She alleges that she was ultimately fired
7 when Haleen believed she would no longer continue a sexual relationship with him.³

8 The complaint was filed in late August of 2015. In November, before the court
9 filed its scheduling and planning order, and therefore before any deadlines had been
10 set or any discovery had taken place, Defendant filed a motion for summary judgment.
11 In the motion, Defendant argued that summary judgment is warranted because it is not
12 Plaintiff’s employer, but rather is only one of several members of the limited liability
13 corporation, 4425 Saddlebag, LLC (“Saddlebag”), which is the entity that actually owns
14 El Hefe. Plaintiff objected to the motion under Rule 56(d) and argued that she needed
15 adequate time to develop her theory of the case as it relates to which entity can be
16 considered her employer. She also indicated that she planned on filing a motion to
17 amend to include Saddlebag as a defendant.

18 Plaintiff then filed the motion to amend at docket 19. In the motion, she seeks to
19 add four corporate defendants to her lawsuit: Saddlebag; JW Bar, LLC; Milo
20 Companies, LLC; and MRM Hospitality, LLC. She alleges that these four entities, along
21 with Defendant, operate as a “joint employer” or as an “integrated enterprise” in that
22 they all operate under the trade name “Riot Hospitality Group” and that they represent
23 themselves to the public as one entity and “perform activities through unified operations
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25
26 ¹Doc. 1 at ¶ 4.

27 ²Doc. 1 at ¶¶ 15-18.

28 ³Doc. 1 at ¶¶ 22-23.

1 and common control.”⁴ She alleges that Defendant and the four proposed corporate
2 defendants all had the authority to hire, fire, or discipline her or otherwise control her
3 work environment. Defendant opposes the inclusion of three of the proposed corporate
4 defendants, arguing that they could not have been her employer and thus any claims
5 against them would be futile.

6 Plaintiff’s proposed amended complaint also seeks to bring a separate cause of
7 action against an individual defendant, Ryan Hibbert (“Hibbert”), for assault and battery.
8 Plaintiff alleges that Hibbert is the part-owner and CEO of Rooke and the other four
9 proposed corporate defendants. She further alleges that on January 10, 2016, nearly
10 eight months after she had been terminated and around four months after this litigation
11 had commenced, Hibbert intentionally threw alcohol at her and berated her during a
12 late-night party and that his conduct was designed to punish her for filing the lawsuit
13 and to intimidate her in regard to the lawsuit.⁵ Defendant opposes the addition of such
14 a claim, arguing that it does not stem from the same case or controversy, and thus the
15 court does not have supplemental jurisdiction over it. In reply, Plaintiff argues that
16 Hibbert is part-owner of Rooke and so his assault against Plaintiff is related to the
17 controversy at hand.

18 Defendant filed a “Notice of Errata in Supplement to its Response in Opposition
19 to Plaintiff’s Motion to Amend,” wherein it sought to clarify that it was not admitting that
20 Hibbert was an owner and CEO of Rooke, as Plaintiff suggested in her reply. Plaintiff
21 filed a motion to strike the notice.

22 **III. STANDARD OF REVIEW**

23 Under Rule 15(a), if outside the allotted time in which to file an amendment as a
24 matter of course, “a party may amend its pleading only with the opposing party’s written
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27 ⁴Doc. 19-1 at p. 3, ¶ 11.

28 ⁵Doc. 19-1 at p. 9, ¶¶ 59-61.

consent or the court's leave."⁶ "The court should freely give leave when justice so requires."⁷ Rule 15 provides for a very liberal amendment policy.⁸ The decision to permit or deny a motion for leave to amend rests within the sound discretion of the trial court.⁹ In deciding whether to grant leave to amend under Rule 15(a), courts generally consider the following factors: undue delay, bad faith by the moving party, prejudice to the opposing party, futility of amendment, and whether the party has previously amended his pleadings.¹⁰ "Generally, this determination should be performed with all inferences in favor of granting the motion."¹¹ The party opposing amendment bears the burden of demonstrating a permissible reason for denying the motion to amend.¹²

IV. DISCUSSION

A. Additional corporate defendants

Given that Plaintiff filed her motion to amend within the allotted time frame set by the court and given the liberal application of Rule 15, the court concludes that Plaintiff can amend her complaint to include the additional corporate defendants. There has been no showing of delay or bad faith on her part and no showing of prejudice to Defendant given that the case is in the early litigation phase. Moreover, the court cannot conclude from the proposed amended complaint that her claim against the

⁶Fed. R. Civ. P. 15(a)(2).

⁷*Id.*

⁸*Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001).

⁹*See DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185-86 (9th Cir.1987).

¹⁰*See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir.1995).

¹¹*Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir.1999).

¹²*DCD Programs*, 833 F.2d at 187; *Richardson v. United States*, 841 F.2d 993, 999 (9th Cir.1988) (stating that leave to amend should be freely given unless the opposing party makes "an affirmative showing of either prejudice or bad faith").

1 additional corporate defendants would be futile. It contains sufficient facts that if
2 accepted as true state a plausible claim.¹³

3 **B. Assault and battery claim**

4 Defendant argues that the proposed amended complaint should not be allowed
5 to the extent it includes a state law claim against Hibbert for assault and battery. It
6 argues that such a claim would be futile because the court does not have supplemental
7 jurisdiction over such a claim. The court can exercise supplemental jurisdiction over a
8 state law claim if that claim is part of the “same case or controversy” as the federal
9 claim.¹⁴ A state law claim is part of the same case or controversy as the federal claim
10 when it “derive[s] from a common nucleus of operative fact.”¹⁵

11 Here, it is apparent that Plaintiff’s Title VII claims and the state law claim against
12 Hibbert do not share a common nucleus of operative fact. The federal sexual
13 harassment claims are premised upon the allegation that Plaintiff’s manager at El Hefe
14 conditioned her employment upon a sexual relationship between them and otherwise
15 used their sexual relationship to manipulate the terms and conditions of her
16 employment. The basis for the state assault claim is not factually related to Plaintiff’s
17 sexual relationship with the manager at El Hefe. Rather, it is premised upon an incident
18 that 1) occurred eight months after Plaintiff stopped working at El Hefe and after she
19 filed the original complaint; 2) did not involve her former manager; and 3) did not occur
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21 ¹³See *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) (noting that the
22 proper test to be applied when determining the legal sufficiency of a proposed amendment to a
23 complaint is the same one used when considering the legal sufficiency of a pleading challenged
24 under Rule 12(b)(6)); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“To survive a motion to
25 dismiss, a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to
relief that is plausible on its face.’” (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
(2007))).

26 ¹⁴28 U.S.C. § 1367(a); see also *Trs. of Constr. Indus. & Laborers Health & Welfare Tr. v.*
27 *Desert Valley Landscape & Maint., Inc.*, 333 F.3d 923, 925 (9th Cir. 2003).

28 ¹⁵*Desert Valley*, 333 F.3d at 925 (quoting *Finley v. United States*, 490 U.S. 545, 549
(1989)) (internal quotation marks omitted).

1 at El Hefe. It is clear that the sexual harassment alleged in her Title VII claim does not
2 rely in any way upon the alleged assault by Hibbert. Furthermore, the alleged drink-
3 throwing incident is not similar in nature to the allegations underlying the Title VII
4 claims. That is, Plaintiff's Title VII claims are unaffected by the exclusion of the assault
5 claim. Even if Hibbert is a part-owner of Rooke or another one of the proposed
6 corporate defendants or even if he may have been motivated to throw a drink and
7 berate Plaintiff because she filed a complaint, as alleged, the court concludes that this
8 association to the underlying federal litigation is insufficient to create a sufficient factual
9 connection between the federal and state claims to support supplemental jurisdiction.

10 **V. CONCLUSION**

11 Based on the preceding discussion, Plaintiff's motion to amend at docket 19 is
12 GRANTED IN PART AND DENIED IN PART. The proposed amended complaint is
13 allowed to the extent that it includes additional corporate defendants, but is denied to
14 the extent it includes a state law claim for assault and battery against Hibbert. Plaintiff
15 is directed to file an amended complaint in compliance with this order.

16 Plaintiff's motion to strike at docket 26 is DENIED as moot.

17 DATED this 4th day of March 2016.

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19 /s/ JOHN W. SEDWICK
20 SENIOR UNITED STATES DISTRICT JUDGE
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